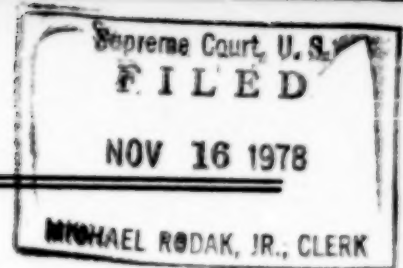


APPENDIX



In The

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1722

LAWRENCE DALIA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

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RELEVANT DOCKET ENTRIES
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Docket No. 75-488-1

UNITED STATES OF AMERICA,

vs.

LAWRENCE DALIA,

Defendant.

Charges:

18 - 371	Conspiracy. (Ct. 1)
18 - 1951	Conspiring to obstruct Comm. by robbery & threats of violence. (Ct. 2)
18 - 2314	Transporting in In. Comm. stolen goods. (Ct. 3)
18 - 2315	Rec. & conc. goods stolen in In. Comm. (Ct. 4)
18 - 659	Poss. goods stolen from In. Comm. (Ct. 5)

<u>Date</u>	<u>Proceedings</u>
11-10-75	Indictment filed 11-6-75.
5-3-76	Notice of Motion of defendant for an evidentiary hearing upon manner in which certain oral and telephonic communications were intercepted; suppression of results of illegal electronic interceptions and adjournment of trial; proof of service filed 4-29-76. (Memorandum of law attached)

Relevant Docket Entries

- 5-12-76 Order granting defendant's motion for extension of time to file pretrial motions and fixing dates for hearing and the filing of briefs filed 5-7-76. (Lacey) Notice mailed
- 5-25-76 Notice of Motion of Defendant for suppression of results of electronic surveillance and for an evidentiary hearing returnable June 14, 1976, proof of service filed 5-24-76. (Brief submitted)
- 6-15-76 Hearing on motion of defendant for suppression of results of electronic surveillance and for an evidentiary hearing. Ordered motion re evidentiary hearing granted. Ordered motion re suppression continued to June 15, 1976. (Lacey) (6-11-76)
- 6-17-76 TRIAL MOVED BEFORE HON. FREDERICK B. LACEY, Judge and Jury. (6-15-76) Jury Sworn Hearing on defendant's application for suppression of evidence re electronic surveillance. Ordered application denied, Hearing on defendant's renewed application for an evidentiary hearing. Ordered application denied. Trial adjourned to 6-16-76.
- 6-18-76 TRIAL CONTINUED. (6-16-76)
- 6-21-76 TRIAL CONTINUED. (6-17-76)
- 6-22-76 TRIAL CONTINUED. (6-18-76)
Hearing on defendant's application for *judgment of acquittal*. Ordered application granted as to Counts 2 and 3. Ordered application denied as to Counts 1, 4 and 5.
VERDICT: Guilty on Counts 1 and 4.
Not Guilty on Count 5.

Relevant Docket Entries

- 6-22-76 Evidentiary hearing on defendant's motion for suppression of evidence re tapes. Decision reserved. (Lacey) (6-18-76)
- 8-3-76 Evidentiary hearing on defendant's application for dismissal of Indictment re wiretap installation and procedure. Ordered evidentiary hearing continued to September 13, 1976. (Lacey) (7-29-76)
- 9-13-76 Hearing on application of defendant for dismissal of indictment or for a new trial re electronic surveillance. Ordered hearing continued to Oct. 4, 1976. (Lacey) (9-9-76)
- 11-12-76 Continued hearing on application of defendant for dismissal of indictment or for a new trial re electronic surveillance. DECISION RESERVED. (Lacey) (11-8-76)
- 1-13-77 Opinion filed 1-13-77. (Lacey) (denying defendant's motion to suppress tapes)
- 1-28-77 SENTENCE: Ct. 1 — Five years.
Ct. 4 — Five years to run concurrent with sentence imposed on Ct.1.
(Lacey) (1-24-77)

Relevant Docket Entries

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 77-1277

UNITED STATES OF AMERICA

vs.

DALIA, LAWRENCE,

Appellant

<u>Date</u>	<u>Proceedings</u>
2-23-77	Certified copy of Notice of Appeal, received February 9, 1977, filed.
1-5-78	Argued. Coram: Rosenn and Higginbotham, C.J. and Van Artsdalen, D.J.
5-3-78	Opinion of the Court (Rosenn and Higginbotham, C.J. and Van Artsdalen, D.J.*), filed. * Hon. Donald W. Van Artsdalen, U.S.D.J. for the Eastern Dist. of Pa., sitting by designation.
5-3-78	Judgment affirming the judgment of the district court, filed January 27, 1977, filed.
5-18-78	Motion by appellant for stay of mandate pending application for certiorari, filed. (4cc) Service in letter dated May 15, 1978.

Relevant Docket Entries

5-22-78	Order (Higginbotham, C.J.) staying the issuance of the mandate until June 2, 1978, filed.
6-8-78	Notice of filing on June 2, 1978 of petition for writ of certiorari, received from Clerk of S.C., filed. (S.C. No. 77-1722)
10-5-78	Certified copy of order dated October 2, 1978 granting the petition for writ of certiorari to the U.S. Court of Appeals for the Third Circuit, limited to Question 1 presented by the petition, received from Clerk of S.C., filed. (S.C. No. 77-1722)

**ORDER DATED APRIL 5, 1973 BY HONORABLE
FREDERICK B. LACEY, U.S.D.J.**

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN THE MATTER OF THE APPLICATION OF THE
UNITED STATES FOR AN ORDER AUTHORIZING THE
INTERCEPTION OF WIRE AND ORAL
COMMUNICATIONS**

Misc. No. _____

**AUTHORIZING INTERCEPTION OF WIRE AND ORAL
COMMUNICATIONS**

**TO: Special Agents of the Federal Bureau of Investigation
United States Department of Justice**

Application under oath having been made before me by James M. Deichert, an attorney with the Organized Crime and Racketeering Section of the United States Department of Justice, and an "investigative or law enforcement officer", as defined in Section 2510(7) of Title 18, United States Code, for an Order authorizing the interception of wire and oral communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the Court finds:

(a) There is probable cause to believe that Larry Dalia and others as yet unknown, have committed and are committing offenses involving theft from interstate shipments, in violation of Title 18, United States Code, Section 659; sale or receipt of stolen goods; in violation of Title 18, United States Code, Section 2315; and interference with commerce by threats or violence, in violation of Title 18, United States Code, Section 1951; and are conspiring to commit such offenses in violation of Section 371 of Title 18, United States Code.

*Order Dated April 5, 1973 by Honorable Frederick B. Lacey,
U.S.D.J.*

(b) There is probable cause to believe that particular wire and oral communications concerning these offenses will be obtained through these interceptions, authorization for which is herewith applied. In particular, these wire and oral communications will concern the theft or robbery of goods moving in interstate commerce, and the transportation, sale, receipt, storage, or distribution of these stolen goods, and the participants in the commission of said offenses.

(c) Normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) There is probable cause to believe that the telephone subscribed to by Precise Packaging, located at 1105 West St. George Avenue, Linden, New Jersey, and bearing telephone number (201) 486-6433; and the telephone subscribed to by Wrap-O-Matic Machinery Company, Ltd., located at 1105 West St. George Avenue, Linden, New Jersey, and bearing the telephone number (201) 382-7665, have been and are being used by Larry Dalia and others as yet unknown in connection with the commission of the above-described offenses.

(e) There is probable cause to believe that the business office of Larry Dalia, consisting of an enclosed room, approximately fifteen (15) by eighteen (18) feet in dimension, and situated in the northwesterly corner of a one-story building housing Wrap-O-Matic Machinery Company, Ltd., and Precise Packaging, and located at 1105 West St. George Avenue, Linden, New Jersey, has been used, and is being used by Larry Dalia and others as yet unknown in connection with the commission of the above-described offenses.

*Order Dated April 5, 1973 by Honorable Frederick B. Lacey,
U.S.D.J.*

WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice, are authorized, pursuant to application authorized by the Attorney General of the United States, the Honorable Richard G. Kleindienst, under the power conferred on the Acting Attorney General by Section 2516 of Title 18, United States Code, to:

(a) Intercept wire communications of Larry Dalia, and others as yet unknown, concerning the above-described offenses to and from the telephone subscribed to by Precise Packaging, located at 1105 West St. George Avenue, Linden, New Jersey, and bearing telephone number (201) 486-6433; and Wrap-O-Matic Machinery Company, Ltd., located at 1105 West St. George Avenue, Linden, New Jersey, and bearing the telephone number (201) 382-7665, which have been and are being used by Larry Dalia and others as yet unknown in connection with the commission of the above-described offenses.

(b) Intercept oral communications of Larry Dalia, and others as yet unknown, concerning the above-described offenses at the business office of Larry Dalia, consisting of an enclosed room, approximately fifteen (15) by eighteen (18) feet in dimension, and situated in the northwesterly corner of a one-story building housing Wrap-O-Matic Machinery Company, Ltd., and Precise Packaging, and located at 1105 West St. George Avenue, Linden, New Jersey.

(c) Such interceptions shall not automatically terminate when the type of communication described

*Order Dated April 5, 1973 by Honorable Frederick B. Lacey,
U.S.D.J.*

above in paragraphs (a) and (b) have first been obtained, but shall continue until communications are intercepted which reveal the manner in which Larry Dalia and others as yet unknown participate in theft from interstate shipments; sale or receipt of stolen goods; and interference with commerce by threats or violence; and which reveal the identities of his confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of twenty (20) days from the date of this Order, whichever is earlier.

It is further ordered upon request of applicant, that the New Jersey Bell Telephone Company, a communication carrier as defined in Section 2510(1) of Title 18, United States Code, shall furnish the application forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted the furnishing of such facilities or technical assistance by the New Jersey Bell Telephone Company to be compensated for by the applicant at the prevailing rates.

PROVIDING THAT, this authorization to intercept oral and wire communications shall be executed as soon as practicable after signing of this Order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18 of the United States Code, and must terminate upon attainment of the authorized objective, of in any event, at the end of twenty (20) days from the date of this Order.

PROVIDING ALSO, that Special Attorney James M. Deichert shall provide the Court with a report on the fifth,

*Order Dated April 5, 1973 by Honorable Frederick B. Lacey,
U.S.D.J.*

tenth, and fifteenth day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continued interception.

s/ Lacey
UNITED STATES DISTRICT
JUDGE

s/ April 5, 1973
5:35 P.M.

DATE

Conformed
JMD
5 April 73

**ORDER DATED APRIL 27, 1973 BY HONORABLE
FREDERICK B. LACEY, U.S.D.J.**

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN THE MATTER OF THE APPLICATION OF THE
UNITED STATES FOR AN ORDER AUTHORIZING THE
INTERCEPTION OF WIRE AND ORAL
COMMUNICATIONS**

Misc. No. 17-73

**AUTHORIZING INTERCEPTION OF WIRE AND ORAL
COMMUNICATIONS**

**TO: Special Agents of the Federal Bureau of Investigation
United States Department of Justice**

Application under oath having been made before me by James M. Deichert, an attorney with the Organized Crime and Racketeering Section of the United States Department of Justice, and an "investigative or law enforcement officer", as defined in Section 2510(7) of Title 18, United States Code, for an Order authorizing the interception of wire and oral communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the Court finds:

(a) There is probable cause to believe that Larry Dalia and others as yet unknown, have committed and are committing offenses involving theft from interstate shipments, in violation of Title 18, United States Code, Section 659; sale or receipt of stolen goods; in violation of Title 18, United States Code, Section 2315; and interference with commerce by threats or violence, in violation of Title 18, United States Code, Section 1951; and are conspiring to commit such offenses in violation of Section 371 of Title 18, United States Code.

*Order Dated April 27, 1973 by Honorable Frederick B. Lacey,
U.S.D.J.*

(b) There is probable cause to believe that particular wire and oral communications concerning these offenses will be obtained through these interceptions, authorization for which is herewith applied. In particular, these wire and oral communications will concern the theft or robbery of goods moving in interstate commerce, and the transportation, sale, receipt, storage, or distribution of these stolen goods, and the participants in the commission of said offenses.

(c) Normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) There is probable cause to believe that the telephone subscribed to by Precise Packaging, located at 1105 West St. George Avenue, Linden, New Jersey, and bearing telephone number (201) 486-6433; and the telephone subscribed to by Wrap-O-Matic Machinery Company, Ltd., located at 1105 West St. George Avenue, Linden, New Jersey, and bearing the telephone number (201) 382-7665, have been and are being used by Larry Dalia and others as yet unknown in connection with the commission of the above-described offenses.

(e) There is probable cause to believe that the business office of Larry Dalia, consisting of an enclosed room, approximately fifteen (15) by eighteen (18) feet in dimension, and situated in the northwesterly corner of a one-story building housing Wrap-O-Matic Machinery Company, Ltd., and Precise Packaging, and located at 1105 West St. George Avenue, Linden, New Jersey, has been used, and is being used by Larry Dalia and others as yet unknown in connection with the commission of the above-described offenses.

*Order Dated April 27, 1973 by Honorable Frederick B. Lacey,
U.S.D.J.*

WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice, are authorized, pursuant to application authorized by the Attorney General of the United States, the Honorable Richard G. Kleindienst, under the power conferred on the Acting Attorney General by Section 2516 of Title 18, United States Code, to:

(a) Intercept wire communications of Larry Dalia, and others as yet unknown, concerning the above-described offenses to and from the telephone subscribed to by Precise Packaging, located at 1105 West St. George Avenue, Linden, New Jersey, and bearing telephone number (201) 486-6433; and Wrap-O-Matic Machinery Company, Ltd., located at 1105 West St. George Avenue, Linden, New Jersey, and bearing the telephone number (201) 382-7665, which have been and are being used by Larry Dalia and others as yet unknown in connection with the commission of the above-described offenses.

(b) Intercept oral communications of Larry Dalia, and others as yet unknown, concerning the above-described offenses at the business office of Larry Dalia, consisting of an enclosed room, approximately fifteen (15) by eighteen (18) feet in dimension, and situated in the northwesterly corner of a one-story building housing Wrap-O-Matic Machinery Company, Ltd., and Precise Packaging, and located at 1105 West St. George Avenue, Linden, New Jersey.

(c) Such interceptions shall not automatically terminate when the type of communication described above in paragraphs (a) and (b) have first been obtained,

14a

*Order Dated April 27, 1973 by Honorable Frederick B. Lacey,
U.S.D.J.*

but shall continue until communications are intercepted which reveal the manner in which Larry Dalia and others as yet unknown participate in theft from interstate shipments; sale or receipt of stolen goods; and interference with commerce by threats or violence; and which reveal the identities of his confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of twenty (20) days from the date of this Order, whichever is earlier.

It is further ordered upon request of applicant, that the New Jersey Bell Telephone Company, a communication carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the application forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted the furnishing of such facilities or technical assistance by the New Jersey Bell Telephone Company to be compensated for by the applicant at the prevailing rates.

PROVIDING THAT, this authorization to intercept oral and wire communications shall be executed as soon as practicable after signing of this Order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18 of the United States Code, and must terminate upon attainment of the authorized objective, of in any event, at the end of twenty (20) days from the date of this Order.

PROVIDING ALSO, that Special Attorney James M. Deichert shall provide the Court with a report on the fifth,

15a

*Order Dated April 27, 1973 by Honorable Frederick B. Lacey,
U.S.D.J.*

tenth, and fifteenth day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continued interception.

27 April 73
Conformed Copy JMD

s/ Lacey
UNITED STATES DISTRICT
JUDGE

27 April 72
DATE

**EXCERPTS OF TRANSCRIPT OF PROCEEDINGS
DATED JUNE 15, 1976 BEFORE HONORABLE
FREDERICK B. LACEY, U.S.D.J.**

[Commencing at page 1.3]

THE COURT: United States v. Dalia.

All right, Gentlemen, we had some open matters before we got to the jury. Is that right.

MR. RUPRECHT: That's correct, your Honor.

THE COURT: Mr. Deichert, do you want to make a statement for the record that will lead into our consideration of the open matters?

MR. DEICHERT: Your Honor, as I understand the state of the motions now, we have one motion for determination of whether the entry by the agents without the consent of the owner of the premises, the oral electronic surveillance has infected the subsequent interceptions with taint.

The second one would be the minimization issue.

The third one would be that the extensions second and third court orders were legally and factually insufficient.

THE COURT: All right.

Let's deal first with the matter of the entry of the agent.

Do you want to state your position again, Mr. Ruprecht, please?

MR. RUPRECHT: Yes, your Honor.

*Excerpts of Transcript of Proceedings Dated June 15, 1976
before Honorable Frederick B. Lacey, U.S.D.J.*

As far as legal argument goes, there is no [1.4] case that is directly on point other than apparently an unreported case that Mr. Deichert advised me of yesterday afternoon and that is a case decided by Judge Gesell on April 23, 1976.

In that case the agents informed the judge to whom they were making an application to intercept oral communications, that they wished to install a listening device; that they thought they would have to do it by either a break-in or by gaining entry through a ruse.

The matters were discussed with the Court. The Court specifically told the agents that the Court did not care if they used either a ruse or a break-in entry and gave them specific authority to break and enter, or to make entry through a stratagem.

The officers did on two occasions, through a bomb scare, enter and install the listening device.

The matter then came before Judge Gesell on a motion to suppress. He was not the issuing judge and he found that the order of authorization was too broad.

The statute under which the authorization was granted apparently is identical to the Omnibus Crime Control Act that contains Title 3.

It was a particular statute just applicable to the District of Columbia.

But Judge Gesell found that this order was too [1.5] broad in that it did not put any controls on the agents as to what they might do when they were in there.

*Excerpts of Transcript of Proceedings Dated June 15, 1976
before Honorable Frederick B. Lacey, U.S.D.J.*

He intimated that probably the part of the order in which the agents were given the authority to break and enter was unconstitutional; although he did not have to face directly that issue. That issue is directly faced by your Honor.

The case that was decided by Judge Gesell, U.S. v. Ford and others, is one that is not nearly as strong as this case because in this case I am led to believe that the agents did make an otherwise unlawful entry in order to install the listening device.

I have not been furnished with any affidavits and I do not know whether your Honor has. I would request that I be given those affidavits so I can see exactly what it was that the agents did and I can make a better factual argument as to why this would be impermissible.

Again, I don't know what the agents may have done, if anything, about advising your Honor in advance as to their intentions. And, again, I would want to find out more about that.

I would want to find out what they did once they were in there and I'd like to find out why they had to or thought they had to conduct this type of an entry and why other types of less obnoxious methods of securing [1.6] this information would not be plausible.

Judge Gesell in his opinion discussed the possibility of parabolic microphones and spike microphones. And, of course, there's many other ways a person can think of of overhearing conversations without being a party to those conversations.

In short, I am making a request I be furnished with more factual information. But the general legal argument I'm making

*Excerpts of Transcript of Proceedings Dated June 15, 1976
before Honorable Frederick B. Lacey, U.S.D.J.*

is that Title 3 simply does not consider this type of action on the part of the officers engaged in electronic surveillance. There is absolutely no authority given in Title 3 for this. It is not implicit in it and at the very least the overseeing Court must be advised of something as important as this, namely, something so out of keeping with the way we consider fair play to be in our society that it should be for the Court to set the guidelines, to set the rules to be advised and to be in control of the situation at all times.

THE COURT: Well, how does the intrusion into an office space which would ordinarily be illegal how does that differ from an intrusion by electronic surveillance on a telephone?

MR. RUPRECHT: Because the officers are making the entry themselves and they're making an entry into a person's quarters without his knowledge, with no supervision [1.7] over their activities and unbeknownst to the judge who is supposed to be supervising this whole activity. And that, I think, is the especially dangerous part of this entire operation, that it is hidden from the overseeing court. The overseeing court has not imposed guidelines on the officers, they haven't told the officers what they may or may not do. The Court has not made any judgment as to whether or not an entry of this type is really necessary, whether or not there are other alternatives to this type of illegal entry that would not run the risks that would be attendant with this, that would not be subject to such abuse as this.

There is no way of knowing what these officers may have done in there other than their self-serving declarations. And they were without guidelines because as near as I can find from the applications that were made before your Honor, your Honor was never advised, at least on paper, that this is what the officers intended to do.

*Excerpts of Transcript of Proceedings Dated June 15, 1976
before Honorable Frederick B. Lacey, U.S.D.J.*

And it certainly, I think, is fair to say that if the officers intended to do such a thing the overseeing judge should have been advised of it and he might have well said: "Isn't there another way you can do this? Shouldn't you make some sort of a showing to me before I give you the right to break into someone's office?"

And, again, shouldn't the overseeing Court say: [1.8] "All right, I will let you do it but this is exactly what I am going to require."

And then lay down some guidelines as to what these officers may and may not do, what persons ought to be present, what type of a record should be made immediately after the fact.

For example, it might well be that because of the unusual nature of a break-and-entry that the Court might want to interrogate the officers immediately after they have gone on this covert operation.

The whole operation is so unusual, so out of keeping and so different than just going to a telephone company and saying: "May we tie in to one of your lines that happens to be in this man's office?" It's so different in kind from that type of thing that it demands specific attention from the Court and it demands that the Court be fully advised at all times of what's going on here.

THE COURT: All right.

Let's see — let me have that affidavit, please.

MR. DEICHERT: Your Honor, there is one additional affidavit from an FBI employee and I had to Thermofax these copies to two other offices outside the State and I was unable to

*Excerpts of Transcript of Proceedings Dated June 15, 1976
before Honorable Frederick B. Lacey, U.S.D.J.*

get the one back because of a technical problem with the Thermofax. As soon as I get it, [1.9] I will submit it. It merely parrots or mirrors the affidavits of the other two agents.

THE COURT: All right.

Now, Mr. Ruprecht raised one question that we can deal with I think immediately.

Whether there was any discussion between the attorney who oversaw this matter and the agent on the one hand and the Court on the other.

My own recollection is that there was no such discussion. I'd like to hear from you on this.

MR. DEICHERT: Yes, your Honor, that's correct.

The advice to the Court came in the form of the progress report. The first progress report I was submitted, I would assume, on the tenth or eleventh of April.

THE COURT: Look. I'm simply asking this —

MR. DEICHERT: No, there was —

THE COURT: Listen carefully to my questions.

I always have trouble with you. You don't listen to my questions.

Was there any discussion between you and the agent on the one hand and me on the other as to how this order was going to be carried out?

*Excerpts of Transcript of Proceedings Dated June 15, 1976
before Honorable Frederick B. Lacey, U.S.D.J.*

MR. DEICHERT: No.

THE COURT: All right.

[1.10] That was one question that you wanted asked.

MR. RUPRECHT: That's correct, your Honor.

THE COURT: Now, before we get into the affidavits — and I'll deal with that in a moment — I think your record also ought to reflect you have raised this as another issue. I think your record also reflected a response to that issue.

My recollection, again, is that I gave no limiting instructions on how my order was to be carried out.

MR. DEICHERT: That's correct.

THE COURT: And my recollection further is that I did not explore afterwards how my order was carried out. Is that correct? In terms of how the entry was made.

MR. DEICHERT: Yes, that's correct as well.

THE COURT: Is that correct?

I don't have any recollection of having done that.

But I nonetheless wanted to rely on your recollection as well.

All right.

*Excerpts of Transcript of Proceedings Dated June 15, 1976
before Honorable Frederick B. Lacey, U.S.D.J.*

Now, I have an affidavit which is not executed. This is from an Agent Suter.

I see you do have the execution on this on the [1.11] fourth page.

MR. DEICHERT: Yes, sir.

THE COURT: Mark these two affidavits, Miss Healy. The Suter affidavit as Court 1 on this hearing.

THE CLERK: Marked Court's Exhibit 1 for identification.

(C-1 marked for identification.)

THE COURT: And then the McCluan affidavit as Court Exhibit 2.

THE CLERK: Marked Court's Exhibit 2 for identification.

(C-2 marked for identification.)

THE COURT: All right.

Your position, I take it, Mr. Ruprecht, is that the statute is unconstitutional?

MR. RUPRECHT: No.

My position is not that the statute is unconstitutional because the statute does not specifically authorize a break and entry. If the statute did specifically authorize a break and entry then I would make an argument it was unconstitutional in that respect.

*Excerpts of Transcript of Proceedings Dated June 15, 1976
before Honorable Frederick B. Lacey, U.S.D.J.*

I would also alternatively argue that if that portion of the statute, hypothetically, that gave the right to break and enter gave it under the aegis of the Court then in this instance this would be violative of [1.12] what would be constitutionally required to have a break and entry. A lack, a total lack of any type of overseeing by the Court itself.

If the statute by its silence is deemed to include a right on the part of the officer to break and enter then I would agree the statute is unconstitutional. But I don't concede that that's what the statute means. And I don't think that there is any warrant for that type of an interception.

But if this Court does feel that giving the officers a right to overhear conversations other than wire tapping implies covert entries then clearly it must also imply judicial supervision of that important aspect of the operation.

THE COURT: All right.

What is your response to that position, which I think is clearly stated and calls for a response?

MR. DEICHERT: Your Honor, I think the statute does, in Section 4 of 2518: "By allowing an order to command the agent to secure the assistance of a common carrier, landlord, custodian or other person to accomplish the interception unobtrusively and with a minimum of interference" that it does expressly allow an entry to be made into a private residence or private building without the consent of the owner or the landlord, for that matter.

[1.13] THE COURT: Or the tenant.

*Excerpts of Transcript of Proceedings Dated June 15, 1976
before Honorable Frederick B. Lacey, U.S.D.J.*

MR. DEICHERT: I'm sorry?

THE COURT: Or the tenant.

MR. DEICHERT: Yes, sir.

The Ford decision that I brought to the Court's and counsel's attention yesterday, in fact, does recognize that Congress implicitly in its — the course of legislating Title 3 would allow a surreptitious entry. That's at the top of page 6. Pertinent quote: "Since the statute does not bar the use of such devices by the police, Congress must be taken to at least have granted or impliedly recognized the general power of the Court to authorize a covert or possibly otherwise illegal entry to place a 'bug' under some circumstances."

The argument that the Government would advance would be twofold. First, that the entry itself is not a search and that the statute authorizes the entry and circumstances of installing electronic surveillance device.

Secondly that the entry is not the search. That the interception of the sounds through the microphone is the search. And under the Fourth Amendment aspect if it's — the Court determines this is a search that it is not an unreasonable search.

Under the Fourth Amendment the — there are [1.14] interceptions to the — withdrawn.

Under the Fourth Amendment I think that the two clauses that can be seen are, one, the warrant clause and the other the aspect of reasonableness of search. And I think that grows out of the vice of the general warrants that were abounding two hundred years ago and that is the vice of an executive officer,

*Excerpts of Transcript of Proceedings Dated June 15, 1976
before Honorable Frederick B. Lacey, U.S.D.J.*

not a judicial officer, without a finding of probable cause issuing a warrant to seize not specified and not particularized items of property; and that the general warrants were trespassory in nature.

I think Katz, the 1967 Supreme Court case, dealing with electronic surveillance, recognizes that although the agents — the electronic surveillance was illegal if requirements could be met under the scope of prior judicial approval, specificity of the warrant, et cetera, that electronic surveillance can come under the Fourth Amendment.

Under the reasonableness of the search aspect — because we do have a warrant here, that is specific, specifically drawn and narrowly drawn — the reasonableness of the search, I think, there are several analogies I would advance. One, I put today in the form of the body cavity search which can take place without a warrant, which can take place upon reasonable suspicion and the entry into the human body I would concede is a much higher invasion of [1.15] personal privacy and liberty than the physical entry into a building that's not a domicile.

And I think under the cases of Rochin and Schmerber that the type of entry, for instance, the physical entry into a building is not that which would come under of those of shocking the Court's conscience or, respectfully, it would come under the terms of being violative of the nature of the Constitution.

We have, for instance, in this Circuit, case law in Gervato, a Third Circuit case, which held that advance notice and prior judicial authority is not required to execute a search warrant. And instances where the subject is not present at the premises to be searched and where the agent did force an entry and the search was upheld.

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Gervato and some of the other cases dealing with Rule 41, Federal Rule of Criminal Procedure, indicate the rule to be followed. And expressly Rule 41 indicates a definite procedure that can be followed if no one is present at the place of the search and that is the leaving of an inventory.

Here we have the leaving of an inventory pursuant to Title 3 which originally was required within 90 days. In this case it was extended upon an application ex parte to the Court by the Government.

[1.16] The defendant was inventoried. The defendant has been served with the opportunity to have access to all the contents of the fruits of the search and we feel that these protections under Title 3, and the manner in which this case was executed do, indeed, constitute a reasonable search. And that the search was not the entry, that the search only comes from the oral surveillance overhearing a particular conversation.

I would submit on the briefs unless the Court has additional questions.

THE COURT: All right. Let me just read something in the Ford opinion.

All right. I think that the only fair thing to do on this application would be to make available to Mr. Ruprecht the affidavits or copies of the affidavits that are submitted. I therefore would direct that they be — copies be made available, Mr. Deichert.

MR. DEICHERT: I have provided copies, your Honor.

THE COURT: All right.

*Excerpts of Transcript of Proceedings Dated June 15, 1976
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On this aspect I think I'll proceed in this fashion. I'm going to reserve on this aspect of the application until the conclusion of the trial.

Well, perhaps I should do it this way. I'm going to deny this application — this aspect of the [1.17] application that I gather can be stated in these terms. It's an application to suppress founded upon lack of judicial supervision of the manner in which the order was implemented or executed.

Does that state it fairly?

MR. RUPRECHT: That does. And also that the statute itself does not provide for covert entries. That it is a misreading of the statute to gather from it that the authorities were warranted in doing this anyway.

THE COURT: All right.

So, in effect, you're claiming a Fourth Amendment violation.

MR. RUPRECHT: Exactly.

THE COURT: All right.

Now, there's another aspect to this and that is that Mr. Ruprecht had asked for an evidentiary hearing.

And as to that I'm going to deny that but without prejudice to renewal at the close of the trial.

* * *

**EXCERPTS OF TRANSCRIPT OF PROCEEDINGS
DATED JULY 29, 1976 BEFORE HONORABLE
FREDERICK B. LACEY, U.S.D.J.**

[Commencing at page 21 line 11]

* * *

MR. RUPRECHT: The remaining motion this morning would deal with the entry into Mr. Dalia's place of business by FBI agents in order to install the electronic device occurring on, I believe, April 5, 1973, and then a re-entry sometime in May of 1973.

THE COURT: Who's the agent that did that, Mr. Deichert?

MR. DEICHERT: There are three agents, your Honor. I have them present. Their affidavits were previously submitted in camera under seal. And the protective order was granted by the Court to limit Mr. Ruprecht's access to them, to him personally.

THE COURT: Suppose you bring in the agent then.

[22] NEIL E. PRICE, called as a witness on behalf of the government, being first duly sworn, testifies as follows:

THE COURT: All right, Mr. Deichert.

DIRECT EXAMINATION BY MR. DEICHERT:

Q. Agent Price, how are you employed? A. Special Agent with the Federal Bureau of Investigation.

Q. And how long have you been so employed in that capacity? A. Approximately nine years.

Q. Where were you employed in March of 1973? A. The Newark office of the FBI.

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before Honorable Frederick B. Lacey, U.S.D.J.*

Q. Now, did there come a time when you went to 1105 West St. George Avenue, Linden, New Jersey? A. Yes, sir.

Q. And when was that? A. Sometime in 1971. The spring.

Q. I'm sorry? A. The spring.

Q. Of what year? A. 1971.

Q. And how long after the initial time that you went did you have occasion to learn that a court-ordered [23] electronic surveillance order had been signed granting electronic surveillance at that premises? A. Sir, how long before?

Q. Yes. A. Several weeks.

THE COURT: Mr. Deichert, we have a very narrow issue here. Can we get to it?

MR. DEICHERT: Yes, Judge.

Q. And were you aware there was an order signed on April the 5th, 1973, for Mr. Dalia's premises? A. Yes, sir.

I'm sorry, I said 1971; I meant 1973.

Q. In March of 1973 what happened? At Mr. Dalia's premises. A. Well, we were advised that a court order had been signed for installation of a microphone —

THE COURT: Wait a minute.

Are you telling me the order was signed April 5th, '73?

MR. DEICHERT: Yes.

*Excerpts of Transcript of Proceedings Dated July 29, 1976
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THE COURT: Now you asked him what happened in March of '73?

MR. DEICHERT: Yes.

THE WITNESS: Oh, I'm sorry. March.

THE COURT: Will you lead the witness and get [24] to the area we're interested in.

BY MR. DEICHERT:

Q. Before the electronic surveillance order was signed granting oral — the implantation of an oral device, did you have occasion to visit Mr. Dalia's premises to surveil it? A. We did not go to his premises but we surveilled it from areas nearby.

Q. And did you enter the premises on that date? A. On the 5th?

Q. In March. Before the order was signed. A. No, sir.

Q. Okay.

Now, directing your attention to the 5th of April, 1973, you learned there was a court order signed, as I understand, for an oral microphone. A. Yes.

Q. What did you do on the 5th? A. In the early evening we went out and laid some wire around the back of his property back to the shopping center. And approximately midnight myself and some other agents entered the premises, installed a microphone, tested it and then departed.

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Q. Now, how was the entry made on that occasion? A. Through a side window.

[25] Q. And what was the lighting inside? A. There was no lighting.

Q. And when you were inside the premises did you seize or take anything? A. No, sir.

Q. Did you disclose anything that — withdraw that.

Did you tell the FBI agents who did not enter the premises what you had found inside or what you had done inside? A. No, sir.

Q. Now, during the period of time April the 6th through May the 15th, 1973, did you have occasion to re-enter Mr. Dalia's business? A. No, sir.

Q. Did you have occasion to re-enter on or about the 16th of May? A. Yes, sir.

Q. On that occasion what was done? A. We removed the microphone.

Q. And did you take anything from Mr. Dalia's premises? A. No, sir.

Q. Did you pass any information that you had learned while you were in Mr. Dalia's business to any other agent? [26] A. No, sir.

MR. DEICHERT: Cross-examine.

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CROSS-EXAMINATION BY MR. RUPRECHT:

Q. Agent Price, did you prepare any reports dealing with your activities on the day the microphone was installed or removed? A. No, sir.

Q. Was there any reason why you did not prepare any such report?

THE COURT: No. I'm not interested in that. He said he's prepared none.

MR. RUPRECHT: All right.

Q. Agent Price, when you —

THE COURT: It's a very narrow issue, Mr. Ruprecht. Let's get to it, as I told Mr. Deichert.

Q. When you received your orders with respect to the installation of this listening device, did you receive them from a superior or was it from someone on a co-equal level as yourself? A. No, I was advised by my supervisor a court order had been signed.

Q. Okay.

Who gave you the instructions to install the microphone? [27] A. He advised me that the court order was signed for the installation of a microphone.

Q. And who was that? A. Jim Laughlin.

Q. What's his name? A. Jim Laughlin.

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Q. And what was Mr. Laughlin's position?

THE COURT: What's the purpose of this, Mr. Ruprecht?

MR. RUPRECHT: I think the manner of supervision, what was said and conveyed to the agents who actually performed the work might be at the very heart of this issue.

THE COURT: He has told you what he was told.

Did he tell you anything else?

THE WITNESS: No, sir.

BY MR. RUPRECHT:

Q. Did anybody instruct you as to the method or manner you were to perform your tasks? A. In that particular instance, no sir.

Q. Did anybody give you any instructions as to what you were to do with respect to the manner in which the device should be installed or where it should be installed? A. No, sir.

Q. How many agents participated in the installation of this microphone? [28] A. Three.

Q. How many agents participated in the removal of the microphone? A. Two.

Q. Were the two agents who participated in the removal the same as two of the three who installed it? A. Yes.

Q. And you participated in the removal, too; is that correct? A. Yes, that's correct.

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Q. Who were the two others who participated in the installation? A. Agent Seuder and Agent McCluan.

Q. Were either of them superior to you? A. No, sir.

Q. And all of them were special agents of the FBI? A. That's correct.

Q. Was there any type of briefing session held before the installation of this microphone with any of your superiors with respect to what you should do during the time you were installing this microphone? A. Yes.

Q. And who held such a session? A. The general rule was for — I would call a conference or a meeting and we would discuss how we were [29] going to install the microphone, what our plan was.

And we discussed the various backups we needed or assistance.

Q. Was this just a session with you and the other two agents who installed it? A. We would have myself, the other two agents, supervisor, possibly any other agents that would be involved on the street.

Q. Did you participate in the preparation of any documents or affidavits for submission to the overseeing court dealing with the installation of a listening device? A. No, sir.

Q. Did you have any briefing sessions or instruction sessions with any member of the Department of Justice's legal staff or the U.S. Attorney's Office dealing with the manner in which this installation should be performed? A. Not that I recall.

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Q. Or the manner in which the entry should be performed? A. No, sir.

Q. Approximately —

THE COURT: Just a minute, Mr. Ruprecht.

Go ahead, sir.

Q. Approximately what time did you arrive at the place of business of Mr. Dalia on the night that the [30] installation was made? A. Early evening.

Q. And approximately what time did you actually enter the premises? A. I would say around midnight.

Q. And which was your route of entry? What was your route of entry? A. Through a side window.

Q. Do you know what that side window led to? A. An area in the back of the building. It had a lot of machines that clicked all night.

Q. And how about when you removed the microphone, do you recall what your method of access was? A. Same window.

Q. Was it a bathroom window? A. No. There was a refrigerator next to it that I can remember.

Q. When you made this entry did all three officers actually go inside the place? A. At one time or another, yes.

Q. All right.

Was there always one officer outside? A. No.

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Q. Were you accompanied by any other people from the FBI, local police departments, U.S. Attorney's Office [31] or Strike Force attorneys who did not themselves enter the place of business but were present at the scene? A. No, sir. The only other person other than the three of us was at the scene was agents on the street.

Q. And approximately how many of them were there?

THE COURT: Well, I really don't see this as material.

MR. RUPRECHT: All right.

THE COURT: Now, I wanted to find out how entry was gained. What he did when he was inside. I permitted the hearing for that very limited purpose.

MR. RUPRECHT: Fine.

THE COURT: Let's stay within the boundary.

BY MR. RUPRECHT:

Q. Where did you first go after making entry? A. We looked to make sure there was no one else in there for our safety and the safety of anyone else in there.

Q. And did you look all throughout the building to see if anyone was there? A. Yes, sir.

Q. Did all of the agents look throughout the building? A. No, sir. The two of us that entered initially were the ones that did the look.

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Q. Who was the other man? [32] A. Agent McCluan.

Q. And Agent Seuder was outside at this time? A. That's correct.

Q. How long did this looking throughout the building take? A. A few minutes.

Q. And then what next happened? A. Then we proceeded to the office area where we intended to install the microphone.

Q. Did you know in advance where you were going to put this microphone? A. Well, I think as I recall the court order specified that it was to be in a certain area of the room. Certain area of the building, an office area.

Q. So you knew that it had to be installed in that office. A. That's correct.

Q. And did you know from either a diagram of the building or a past experience or someone else telling you what the inside of the building would look like and where the office area would be? A. I believe I had a rough idea of what the floor plan was like.

Q. Okay.

Where in the office did you then go? [33] A. Well, it's not very big. You can't go very far. To the center.

We looked at the office to see where would be the best place to conceal a microphone.

Q. How large an office was it?

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THE COURT: I'm interested in one thing. Where did you conceal it?

THE WITNESS: In the ceiling.

THE COURT: Where did you put it in the ceiling?

THE WITNESS: In the acoustical tile above the ceiling.

THE COURT: With respect to — was there a desk there?

THE WITNESS: Yes, there was.

THE COURT: Did you put it above the desk?

THE WITNESS: Approximately above the center of the desk.

THE COURT: Any other questions?

BY MR. RUPRECHT:

Q. Approximately how long were you in the office?

THE COURT: That I'll permit.

How long were you there?

THE WITNESS: With running wire and back and forth in the building or the office?

Q. The office. [34] A. In and out, maybe a half an hour total.

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Q. And how about in the building? A. Two or three hours.

Q. During this period of time would you occasionally leave the building?

THE COURT: Now, what else is material about this inquiry, Mr. Ruprecht?

MR. RUPRECHT: Your, Honor, I really thing [sic] that the entire circumstances of what was going on here, the number of entries and exits all may have a bearing on the propriety of what these men were doing there.

THE COURT: After you installed the device in the ceiling, did you then leave?

THE WITNESS: We went outside, connected the wire. Agent Seuder went to the far end of it. Agent McCluan and myself went back in the office and tested it. We talked. And we were in contact with a radio with Agent Seuder outside and he would notify us whether he could hear us talking and then after that we departed.

THE COURT: Did you go back there again before you went back in to remove it?

THE WITNESS: No, sir.

THE COURT: When you removed it what did you do? Did you go in the same way? Tell us what you did.

THE WITNESS: Went in the same window, Agent [35] McCluan and myself entered the building. A quick look-around to make sure again no one was there.

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We didn't, as I recall — we didn't even have to go back into the office because the microphone was in the ceiling above the office space and you could get to it from a loft area out in the large room.

And we removed the microphone, the wire and then departed.

THE COURT: All right.

How long were you in there on that occasion?

THE WITNESS: No more than an hour. Half an hour probably.

THE COURT: Did you say you went in the same way again?

THE WITNESS: Yes.

THE COURT: All right.

That's all I'm going to permit, Mr. Ruprecht, unless you give me an indication of any other lines you want to inquire that I think I might admit.

MR RUPRECHT: Just one or two.

BY MR. RUPRECHT:

Q. Prior to the removal of the listening device, were there any sessions with any members of the U.S. Attorney's office or the Department of Justice Attorneys or Strike Force Attorneys with respect to the manner that [36] you should conduct yourselves while removing the device? A. Not that I recall.

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Q. Was there ever a time when it was necessary to enter that building in order to do anything with that device, either to change its location or to affect it mechanically or electronically so it would transmit in a more satisfactory method? A. No, sir.

Q. Was there specifically on the day before you removed this device any trouble disclosed to you about it and any effort made to correct any problems with the listening device? A. Not that I recall.

MR. RUPRECHT: That's all I have.

THE COURT: All right.

You may step down.

(Witness excused.)

THE COURT: Let me see counsel.

(A discussion is held off the record.)

THE COURT: There has been submitted the affidavits of the other agents who were on the assignment with the agent who has testified.

Can you represent to me, Mr. Deichert, that based on conversation that you have had with them and based on examination of their affidavits that they, if called, [37] would testify substantially, at least, as this agent has?

MR. DEICHERT: Yes, sir.

THE COURT: All right.

*Excerpts of Transcript of Proceedings Dated July 29, 1976
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I'm not going to then permit the calling of the other agents.

* Now, you indicated as well, Mr. Ruprecht, that you had in mind the possibility of calling Mr. Deichert to examine him on why certain information was not brought to my attention. It was clear that it was not, that is the method of breaking, right?

MR. RUPRECHT: That's correct, Your Honor. And I will withdraw that —

THE COURT: All right.

Now, what else is left then?

MR. RUPRECHT: Just this. I intended to put Mr. Dalia very briefly on the stand merely to testify to the existence of some breaks and entry during the period of time that we are concerned with and specifically a break-in that occurred the night before the alleged removal of the —

THE COURT: Would you cross-examine him on that? What would you have to cross-examine him on?

MR. DEICHERT: He already has it in an affidavit form. If he wants —

THE COURT: You're willing to accept it in affidavit form?

[38] MR. DEICHERT: Yes.

THE COURT: Do it that way.

MR. RUPRECHT: Fine.

*Excerpts of Transcript of Proceedings Dated July 29, 1976
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THE COURT: Because —

MR. RUPRECHT: I will.

THE COURT: I don't see any need to cross-examine unless you do.

MR. DEICHERT: No, sir.

MR. RUPRECHT: Thank you very much, your Honor.

THE COURT: All right.

You've got an assignment in the other area, gentlemen.

I think what you might do is submit any supplementals on this break-in that you want to submit. I'll have briefs from both sides. It's an interesting issue. And develop any case law you have for me and get it to me as soon as you can.

MR. RUPRECHT: Very fine.

THE COURT: We have left just the one aspect.

MR. DEICHERT: There was a minimization argument as well today.

THE COURT: I will not hear that today. I think what I'm going to do is decide that on the papers. But you can work on your other assignment I gave you.

MR. RUPRECHT: Yes, Judge.

[39] MR. DEICHERT: Thank you, your Honor.

THE COURT: Thank you, gentlemen.

**AFFIDAVIT OF LAWRENCE DALIA DATED MAY 24,
1976**

STATE OF NEW JERSEY)
COUNTY OF ESSEX)SS.

LAWRENCE DALIA, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the named Defendant in this matter and am generally familiar with the allegations made by the Government herein.

2. It is my understanding that the telephones at my place of business, 1105 W. St. Georges Avenue, Linden, New Jersey were tapped by the Federal Bureau of Investigation between March 15 and May 16, 1973.

3. It is also my understanding that an electronic eavesdropping device was installed in my office at the above address on or about April 5, 1973, and that the device was located above my desk in that office.

4. To the best of my knowledge it would be impossible to install such a device in that location without forcibly gaining access to the building.

5. On at least four (4) occasions between February and May, 1973 my place of business was forcibly broken into and entered at night, and only during the last break-in was anything taken.

6. During the time that my business was located at the above address I leased the premises from the owner, one Benjamin Aruda, who owned and occupied that building located

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Affidavit of Lawrence Dalia Dated May 24, 1976

directly to the west of my building, and whose business address was also 1105 W. St. Georges Avenue, Linden, New Jersey.

s/ Lawrence Dalia
LAWRENCE DALIA

Sworn and subscribed before me
this 24th day of May, 1976.

s/ Robert A. Giegerich, Jr.
ROBERT A. GIEGERICH, JR., ESQ.

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**LINDEN POLICE REPORT DATED MAY 15, 1973
ATTACHED TO FOREGOING AFFIDAVIT**

**POLICE DEPARTMENT
LINDEN, NEW JERSEY**

OFFENSE REPORT

Complainant — MR. JEFFREY DALIA B.F. #64187

Address — 1105 W. ST. GEORGE AVE. LINDEN
Phone 486-6433

Offense — B. & E. Reported by — MRS. HAMILTON

Address — 1105 W. ST. GEORGE AVE. CITY

Place of Occurrence — PRECISE PACKAGING 1105 W. ST.
GEORGE AVE. District # 1

Report Received by — LT. TRATULIS at 9:09
A.M. Date — MAY 15, 1973

Date and Time Offense Committed BET. 10:30 PM 5/14 & 7
AM 5/15/73 How Reported — PHONE

Officers Assigned — LISA

Remarks — REPORT OF A B. & E.

Report of Office (State Fully Circumstances of Investigation)

9:09 A.M.
May 15, 1973

*Linden Police Report Dated May 15, 1973 Attached to
Foregoing Affidavit*

Detailed by Lt. Tratulis to 1105 W. St. George Ave. Precise
Packing (486-6433) Report of B. & E.

Upon arrival Jeffrey Dalia (owners son) of 765 Audrey Dr.
Rahway (381-6273) stated his building was entered through the
bathroom window in rear between 10:30 P.M. 5-14-73 and 7:00
A.M. 5-15-73. Missing from the front office was a cassette
player, value \$30., and from the shop a Craig Stereo AM-FM 8
Track Model C-60005B value \$150. Mr. Dalia said the stereo
was installed at 7:00 P.M. on 5-14-73 and suspects someone on
the night shift. A clock plugged [sic] in near stereo was pulled out
at 2:20 A.M.

ARREST — No

Signed — Louis Lisa
Investigating Officer

Date May- 15 - 73

Signed — Lt. Tratulis
Commanding Officer

Date 5-15-73